



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. Walter C. Woodward, Chairman  
Board of Insurance Commissioners  
Austin, Texas

Dear Sir:

Opinion No. O-436

Re: Is a state-wide mutual assessment life company operating under the provisions of Art 4859f, sections 1 to 20, in arriving at the net taxable premiums under Art. 7064a permitted to deduct from the gross premiums as "the acquisition cost of all of the first year's premiums" the premiums paid during the first year after transfer to the association of the members mentioned?

Your request for an opinion on the above stated question has been received by this office.

Your letter reads in part as follows:

"The Protective Life Insurance Company of Texas, of Brownwood, Texas, operating under the provisions of Article 4859f, Sections 1 to 20, secured the transfer to it during December 1937 of the memberships of two other statewide mutual assessment associations and one mutual aid association. In filing its Tax return for 1938, the Protective Life Insurance Company of Texas deducted from the gross premium receipts the payments made by these transferred members during the first year after the transfer. Please advise if this deduction was legal."

Article 7064a, as amended by the 46th Legislature reads as follows:

"Every group of individuals, society, association or corporation domiciled in the State of Texas transacting the business of life, accident, or life and accident, health and accident insurance for profit, or for mutual benefit or protection, shall at the time of filing its annual statement report to the Board of Insurance Commissioners the gross amount of premiums received from or upon the lives of persons residing or domiciled in this State during the preceding year and each of such groups of individuals, society, association, or corporation shall pay an annual tax of one-half of one per cent of such gross premium receipts, provided, however, that this tax shall not apply to local mutual aid associations, or fraternal benefit societies or organizations. Such gross premium receipts so reported shall not include premiums received from other licensed companies for reinsurance, but there shall be no deduction made for premiums paid for reinsurance. If any such group of individuals, society, association, or corporations does more than one kind of insurance business, then it shall pay the tax herein levied upon the gross premium for each kind of insurance written; the provisions of this Act shall not apply to fraternal insurance organizations or societies that limit their membership to one occupation. The report of the gross premium receipts shall be made upon the sworn statement of two (2) principal officers. Deductions from the gross premium receipts shall be allowed any group of individuals, society, association, or corporation of an acquisition cost of all of the first year's premiums, except that on industrial business such companies shall be permitted to deduct one and one-half ( $1\frac{1}{2}$ ) times the amount of the first year's

premiums as acquisition costs. Upon receipt by it of the sworn statements above provided for, the Board of Insurance Commissioners shall certify to the State Treasurer the amount of taxes due by each of such group of individuals, society, association, or corporation, which tax shall be paid to the State Treasurer on or before the 1st of March following and the Treasurer shall issue his receipt therefor as evidence of the payment of such taxes. No such group of individuals, society, association, or corporation shall receive a permit to do business until all such taxes are paid. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State against any such insurance organizations, except the fees provided for under Article 3920, Revised Civil Statutes of Texas of 1925, as amended by Acts of the Forty-second Legislature of 1931, Chapter 152, Section 1, and no other taxes shall be levied or collected by any county, city, or town except State, county and municipal ad valorem taxes upon the real and personal property of such insurance organizations."

Article 7064a, supra, provides for taxing certain types of insurance companies; and in arriving at the net tax for premiums collected by such companies from their policy holders permits the deduction from gross premiums of the acquisition cost of the first year premiums.

We quote from Words & Phrases, Vol. 6, page 5514 as follows:

"The consideration paid for a policy of insurance is called the premium."

The Supreme Court of the State of South Dakota in the case of Noem vs. Equitable Life Insurance Company said:

"The first premium means the first payment of premium as distinguished from the first annual premium."

First policy year means year for which policy was first issued. Words & Phrases, Vol. 3, page 685. Also see

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the cases of Carter vs. Standard Insurance Company, 238 Pac. 259; American National Insurance Company vs. Thompson, 186 SW 254.

Article 7064a, supra, specifically provides that the deductions from the gross premium receipts shall be allowed any group of individuals, society, association, or corporation of an acquisition cost of all the first year's premiums except that on industrial business such company shall be permitted to deduct one and one-half times the amount of the first year's premiums as acquisition cost. We are of the opinion that the legislature had in mind deductions from the gross premium receipts as acquisition cost, all of the first year's premiums when the policies were first acquired and did not contemplate a transfer of such policies from one company to another and that such companies in securing the transfer would not be permitted to deduct from the gross premium receipts the payments made by these transferred members.

You are respectfully advised that it is the opinion of this department that a statewide mutual assessment life company operating under the provisions of Article 4859f, Sections 1 to 20 inclusive, in arriving at the net taxable premiums under Article 7064a would not be permitted to make deduction from the gross premiums as the acquisition cost of all of the first year's premiums paid during the first year after transfer to the association or company.

Trusting that the foregoing answers your inquiry,  
we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams  
Assistant

APPROVED JUL 14, 1939  
AW:AM

*[Signature]*  
FIRST ASSISTANT  
ATTORNEY GENERAL

